

Bryan K. Benard, 9023  
HOLLAND & HART LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
Telephone (801) 799-5800  
Facsimile (801) 799-5700

*Attorneys for Defendant, Cross-Complainant  
and Third-Party Plaintiff  
Great-West Life and Annuity Ins. Co.*

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

UNIVERSITY OF UTAH, UNIVERSITY  
HEALTHCARE,

Plaintiff,

v.

CABINETEC, INC., a Nevada Corporation,  
CABINETEC HEALTH AND DENTAL  
PLAN, an ERISA governed health plan, and  
GREAT-WEST LIFE AND ANNUITY  
INSURANCE COMPANY, a Colorado  
corporation

Defendants.

GREAT-WEST LIFE AND ANNUITY  
INSURANCE COMPANY, a Colorado  
corporation,

Cross-Complainant and Third Party  
Plaintiff,

v.

CABINETEC, INC., a Nevada Corporation,

) MOTION TO DISMISS CROSS-CLAIM OF  
) CABINETEC, INC. OR ALTERNATIVELY  
) FOR SUMMARY JUDGMENT BY  
) GREAT-WEST LIFE AND ANNUITY  
) INSURANCE COMPANY

) Civil No. 2:09-cv-37

) Judge: Clark Waddoups

)

---

---

and CABINETEC HEALTH AND	)
DENTAL PLAN, an ERISA governed	)
health plan,	)
	)
Cross-Complaint Defendants,	)
	)
and	)
	)
UNITED RESOURCE NETWORKS, a	)
Delaware corporation, and	)
OPTUMHEALTH, INC., a Delaware	)
corporation,	)
	)
Third-Party Defendants.	)
	)
	)

---

Defendant, Cross-Complainant and Third-Party Plaintiff Great-West Life and Annuity Insurance Company (“Great-West”), through its counsel of record, Holland & Hart LLP, and pursuant to Rule 12(b)(6) or alternatively, Rule 56, of the Federal Rules of Civil Procedure, hereby respectfully moves the Court to dismiss the Cross Claim Against Great-West, filed August 11, 2009, by Defendants, Cross-Complaint Defendants, and Cross-Claimants CabineTec, Inc. and CabineTec Health and Dental Plan (collectively “CabineTec”), or alternatively, to grant summary judgment in favor of Great-West and against CabineTec.

The Motion is made on the grounds that CabineTec has failed to state a claim for which relief can be granted as against Great-West or alternatively, that as a matter of law CabineTec cannot establish the required elements of its claims against Great-West. Specifically, CabineTec’s claims are preempted by the Employee Retirement Income Security Act (“ERISA”). In addition, the doctrine of res judicata bars all three claims due to Great-West’s prior Nevada action against CabineTec. That dispute involved the same parties, the present

claims asserted by CabineTec were compulsory counterclaims and could have been raised in the Nevada action, and CabineTec confessed judgment and admitted its failure to pay premiums as alleged in the Nevada claim by Great-West. Finally, the motion is proper because the actual contractual provisions between the parties demonstrate that each of CabineTec's claims fail as a matter of law, for the simple reason that the allegations of wrongdoing by CabineTec are fatally undermined by the terms of the parties agreement. Consequently, for these reasons, the Court should dismiss CabineTec's Cross-Claim with prejudice, or alternatively, grant summary judgment to Great-West on each claim.

The motion is supported by the accompanying memorandum in support hereof, the pleadings and exhibits on file in this action, the Affidavit of Dianna L. Sweet, the documents and exhibits before the Court, and on such other evidence as may be submitted to the Court.

Dated: September 11, 2009

HOLLAND & HART LLP

/S/ Bryan K. Benard

Bryan K. Benard

Attorneys for Defendant, Cross-Complainant and  
Third-Party Plaintiff Great-West Life and  
Annuity Insurance Company

## **CERTIFICATE OF SERVICE**

I hereby certify that on 9/11/2009, I electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

Julie K. Ewing  
julieewing@utah.gov

Brent C. McDonald  
bmcdonald@snowjensen.com,brentm77@gmail.com

Lewis P. Reece  
lreece@snowjensen.com,bsevernak@snowjensen.com

Scott A. Hagen  
shagen@rqn.com,dvandenakker@rqn.com,docket@rqn.com

s/ Bryan K. Benard  
HOLLAND & HART LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
Phone: (801) 595-7833  
Fax: (801) 364-9124  
bbenard@hollandhart.com

**ATTORNEYS FOR DEFENDANT, CROSS-  
COMPLAINANT AND THIRD-PARTY PLAINTIFF**